

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

OLIVE F. GATLING, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. H-11-2879
§
CITIMORTGAGE, INC. and §
FEDERAL NATIONAL §
MORTGAGE ASSOCIATION, §
§
Defendants. §

ORDER

Currently pending in this case are the defendants' motion for summary judgment, (Docket Entry No. 32), and the plaintiff's motion to extend the time in which to file a notice of appeal, (Docket Entry No. 34). This order relates to the latter motion. On December 28, 2011, this court filed a memorandum opinion that, among other things, granted the defendants' motion to dismiss. Leave to amend was granted for some of the claims. (Docket Entry No. 25). The plaintiff has since filed an amended complaint, (Docket Entry No. 28), and the defendants have filed a motion for summary judgment, (Docket Entry No. 32). The plaintiff now seeks leave for an extension of time to file a notice of appeal to the December 2011 opinion.

No extension of time is necessary, because a final appealable order has yet to be entered in this case. A party ordinarily may appeal only "final decisions of the district courts of the United States[.]" 28 U.S.C. § 1291. "For purposes of § 1291, a final judgment is normally deemed not to have occurred until there has been a decision by the District Court that ends the litigation on the merits and leaves nothing to do but execute the judgment." *Martin v. Halliburton*, 618 F.3d 476,

481 (5th Cir. 2010) (internal quotation marks omitted). No final judgment has been entered; the litigation continues on the merits. Additionally, the December 2011 opinion is not immediately appealable under the collateral-order doctrine. Three conditions must be present for an order to be appealable as a collateral order: the order must “[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment.” *Will v. Hallock*, 546 U.S. 345, 349 (2006) (internal quotation marks omitted). None of the conditions are present here.

Once the litigation concludes with a final judgment, whether for or against the plaintiff, the plaintiff will be able to appeal any prior ruling by this court, including the December 2011 opinion. The motion for an extension of time, (Docket Entry No. 34), is denied.

SIGNED on March 12, 2012, at Houston, Texas.



Lee H. Rosenthal
United States District Judge